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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/929,238	08/13/2001	Stephen F. Gass	SDT 315	8811
27630	7590	09/20/2005	EXAMINER	
SD3, LLC 22409 S.W. NEWLAND ROAD WILSONVILLE, OR 97070				ASHLEY, BOYER DOLINGER
		ART UNIT		PAPER NUMBER
		3724		

DATE MAILED: 09/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/929,238	GASS ET AL.	
	Examiner Boyer D. Ashley	Art Unit 3724	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 02 June 2005 and 05 July 2005.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 9 and 30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 9 and 30 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                       |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____.   |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>7/24/05; 6/4/05</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)   |
|  | 6) <input checked="" type="checkbox"/> Other: <u>See Continuation Sheet</u> . |

Continuation of Attachment(s) 6). Other: 1449's-2/27/05; 12/19/04; 12/09/04.

## DETAILED ACTION

1. This office action is in response to applicant's response filed 6/02/05 and supplemental response filed 7/5/05. It should be noted that the double patenting rejections have been reviewed and withdrawn in light of applicant's amendments in all copending applications, abandonments and by applicant's arguments presented in the above-mentioned responses.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 9 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brundage et al., U.S. Patent 4,934,233, or Suzuki et al., U.S. Patent 5,791,224, in view of Lokey, U.S. Patent 3,785,230, and Yoneda, U.S. Patent 4,117,752.

Brundage et al. and Suzuki et al. both disclose the invention substantially as claimed except for the detection system adapted to detect contact between the blade and a person; and a brake mechanism adapted to stop rotation of the blade upon detection by the detection system of contract between the blade and the person. However, Lokey discloses that it is old and well known in the circular saw art to use detection systems and brake mechanism with circular cutting tools for the purpose of detecting unsafe conditions and then braking the cutting tool such that injury to the user is prevented. Yoneda discloses that it is old and well known in the art to use detections

that detect contact between a user and a blade for the purpose of preventing injury to a user. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to use a detection system and braking mechanism, as taught by Lokey and Yoneda, with the miter saws of Brundage et al. and Suzuki et al., in order to prevent injury to a user.

#### ***Response to Arguments***

4. Applicant's arguments filed 6/02/05 and 7/5/05 have been fully considered but they are not persuasive.

Applicant contends that the combination of Brundage et al. or Suzuki et al. with Lokey and Yoneda are improper as the specific structures of Lokey and Yoneda would not work on a miter and/or would be unsafe. However, the examiner respectfully disagrees. The test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). In this case, it is not a question of the specific structural elements of Lokey and Yoneda are incorporated into the structure of Brundage or Suzuki but rather what the combination of references discloses, i.e., a miter saw with a braking mechanism for stopping a blade upon detection of contact between the user and the blade.

As to the specifics of the structural elements of Lokey and Yoneda are irrelevant given the current claims have no specifics to structural details for providing the braking/detecting functions. What structure in the claims allow for braking on a miter saw that is not in the prior art?

5. For the reasons above, the grounds of rejection are deemed proper.

***Conclusion***

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Boyer D. Ashley whose telephone number is 571-272-4502. The examiner can normally be reached on Monday-Thursday 7:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allan N. Shoap can be reached on 571-272-4514. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Boyer D. Ashley  
Primary Examiner  
Art Unit 3724

BDA  
September 18, 2005